

REMARKS**I. General**

Claims 1-21 are pending in the present application. Claims 15-21 are canceled by the present Amendment without prejudice. Claims 7 and 14 have been amended, and new claims 22-28 have been added by the Amendment. Accordingly, claim 1-14 and 22-28 will remain pending after entry of the present Amendment.

II. Election

In response to the restriction requirement set forth in the Office Action mailed on April 26, 2005, Applicant hereby provisionally elects the claims identified by the Examiner as Group I (claims 1-14), Species 1 identified by the Examiner as being shown in Figure 1A, and Subspecies 1 identified by the Examiner as being shown in Figure 5A for continued examination. With respect to the Examiner's requirement of listing the claims that read on the elected species, Applicant asserts that all of the claims of elected Group 1 read on the needle of elected Species 1 shown in Figure 1A, and read on the needle tip of elected Subspecies 1 shown in Figure 5A. The election is being made with TRAVERSE. Applicant respectfully requests reconsideration and withdrawal of the restriction requirement in light of the arguments set forth below.

III. Amendment

Paragraphs 0053 and 0054 have been amended to correctly refer to the anterior and posterior anatomy of the spine, and to correct a verb tense in 0053. Those skilled in the art would readily have appreciated the correct anterior and posterior orientation of the spine. Accordingly, no new matter is presented.

Claims 7 and 14 have been amended to replace "all" with "a plurality of." No new matter is presented. The amendments were made to make the claims more grammatically clear, and not to distinguish over any art. Moreover the amendment does not narrow the scope of the claim.

The claims have been amended to add new claims 22-28. Support can be found in the disclosure, at least, at paragraphs 0032-0050. Applicant asserts the new claims are directed

to subject matter consistent with the election of Group I, the needle of Species 1 as shown in Figure 1A. As to needle tip of Subspecies 1 shown in Figure 5A, all of the claims read on Figure 5A, except for claim 22. However, claim 1 is a generic claim with respect to claim 22, which obviates the need for restriction, since Applicant is entitled to a reasonable number of species claims if a generic claim is determined to be allowable. 37 C.F.R. § 1.141(a). No new matter is presented, and the new claims may properly be prosecuted with the elected claims.

IV. Argument

Restriction between Species

Although Applicant traverses the Examiner's requirement for restriction between Groups, the non-elected claims have been canceled in order to present additional claims more clearly drawn to the invention of Group I, as identified by the Examiner. As discussed above, the Examiner is requiring an election of species and subspecies on page 3-4 of the Office Action. Although Applicant has made a provisional election as required by the Examiner, Applicant respectfully asserts that the requirement is improper. Claims 1, 8, and 24 comprehend generic embodiments disclosed in the application. Figures 1A, 1B, 2, 3A, 3B, 4D, 5A, 7A, 7B, and 8 are not properly restricted to different species because they are not mutually exclusive. See M.P.E.P. § 806.04(f). The following discussion refers to the Figures asserted by the Examiner to be separate species.

For example, Figure 1A and 1B, are embodiments of bendable needle system with a flexible stylet inserted in the lumen shown by the cut away in Figure 1B, while Figure 2 is an embodiment of a flexible stylet with a coil that might be inserted into the needle's lumen. See paragraphs 0032, 0033, and 0036. The figures are not mutually exclusive as a stylet is present in all 3 figures. Thus, they are not species with respect to one another. See M.P.E.P. § 806.04(f). Further, Figures 7A and 7B depict one embodiment of a stylet where, in Figure 7A, the coil of the stylet is shown in a state of compression holding the tip of the stylet in place, and in Figure 7B, the stylet is shown being extracted from the needle placing the coil of the stylet under tension, such that the coil is dynamically extended. See paragraphs 0045-0046. Thus, they are not individual species because they show a stylet alternatively in a state of compression or tension, and are not mutually exclusive of each other, or of Figures 1A-B

and 2, discussed above. Figure 3A shows an embodiment where the stylet coil has a hollow center, and is generic to Figure 3B, which shows a rod through the hollow center. Thus, they are not mutually exclusive to each other or the previous Figures showing a stylet. See paragraph 0039. The same is true of Figure 8, which depicts a bendable needle with a stylet having a coil. Moreover, Figures 5A and 4D show one embodiment of a tip of the bendable needle, with 4D showing the tip of the stylet fitting flush with the sharp cutting end. See paragraphs 0040- 0042. Thus, they are not mutually exclusive of each other or of any of the Figures above. Since none of the figures discussed above are mutually exclusive, the Examiner should not require restriction among different species. See M.P.E.P. § 806.04(f). Accordingly, Applicant request withdrawal of the requirement for restriction.

Even though Applicant has complied with the requirement for restriction by making a provisional election of Figure 5A, the requirement for the election over Figure 4D is improper because Figure 4D shows the identical tip. Further, Figures 5B-C are species of the generic claim element “a sharp cutting end” in claims 1, 8, and 25. Therefore, the Examiner should not require restriction as to Figures 5B-C because a reasonable number of species claims should be allowed if a generic claim is allowable. 37 C.F.R. § 1.141(a). Further, under 35 U.S.C. § 121, there must be a serious burden on the examiner for the restriction to be required. However, the Examiner has not shown a separate status in the art for his alleged species and subspecies by citing patents as evidence of such separate status. Thus, restriction is improper. See M.P.E.P. § 808.02

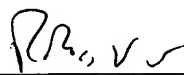
V. Summary

Although provisionally making the elections required by the Examiner, Applicant has shown that the requirement for election is improper and should be withdrawn. Applicant respectfully requests that the Examiner withdraw the restriction requirement and examine each of the pending claims.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 06-2380, under Order No. 02-048 from which the undersigned is authorized to draw.

Dated: May 24, 2005

Respectfully submitted,

By 

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